IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

CRL.A.No. 901 of 2002(A)

CC.483/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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APPELLANT: PETITIONER

P.V.HARIDAS, S/O.EASWARA WARRIER,
PUTHEN WARRIATH, PULLODE AMSOM, MANAGING PARTNER
BESTONE ASSOCIATES, ANKAMASALA, KUNISSERRY
POST, PALAKKAD DIST.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.JEBY JACOB

RESPONDENTS: RESPONDENTS

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1. SHAJAN VARGHESE, S/O.GHEEVARGHESE,
L.P.SCHOOL TEACHER, PARUVASSERY POST,
ALATHUR TALUK.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
PUBLIC PROSECUTOR ADV. SRI. THOMAS JOHN AMBOOKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

CRL.A. NO. 901 OF 2002

Dated this the 1st day of February, 2007

J U D G M E N T

The complainant in C.C. No.483/98, a complaint filed alleging offences under Sections 420 and 464 of I.P.C against the first respondent, is the appellant, being aggrieved by the acquittal of the first respondent under Section 248(1) Cr.P.C of the offence alleged.

2. The appellant alleged, inter alia, in the complaint filed by him that himself and the respondent are friends; that the respondent sold an extent of 3.55 acres of property comprised in Sy.No.686/1 to him for a sale consideration of Rs.90,000/- (Rupees ninety thousand only) under Exhibit.P5 Sale deed dated 30.1.1996; fraudulently inducing the complainant to believe at the time of sale that the property belongs to the respondent and that there is no encumbrance on the property, but for which the appellant would not have got executed Ext.P5 sale deed. However, on 12.2.1996 when he tried to enter into the property to cultivate, some forest officials prevented him on the ground that it is a forest land and that the respondent had no right over the property so as to be transferred under Exhibit.P5 and that on

enquiry, he came to know that the property described in Ext.P5, as per the boundaries is actually property comprised in Sy. No.686/9, which is part of vested forest. The respondent was transferring the property to him knowing that the property belongs to Government, being forest land and that the respondent has thus misrepresented facts and cheated the complainant by creating a false document.

3. The trial court took cognizance of the complaint and issued summons to the respondent and after appearance of the respondent and complying with all legal formalities framed charge against the respondent for offence under Section 420 I.P.C and questioned him. Thereupon, he pleaded not guilty and consequently a trial of the case was conducted. On the side of complainant PWs 1 and 2 were examined and Exhibits P1 to P11 were got marked. On the complainant closing his evidence, the respondent was questioned under Section 313 Cr.P.C. Thereupon, he generally denied all incriminating circumstances appearing in evidence against him and maintained that he is innocent. According to him, he has transferred to the appellant/complainant only that portion of the property in his

possession and enjoyment which he had obtained in his name and that he is innocent. On the defence side DW1 was examined and Exhibits D1 to D3 were marked.

4. The trial court considered the case in the light of the evidence adduced as aforesaid and found that the respondent transferred to the appellant-complainant only that portion of the property which he obtained under Exhibit.D1 Sale deed from Sri.Sundaran, who purchased property from one Smt. Kunjamma under Exhibit.D2, who in turn had effected purchase of the same from one Sri. Joseph under Exhibit. D3 Sale Deed and consequently found the respondent not guilty and acquitted him as already stated.

5. It is vehemently contended before me by the learned counsel for the appellant that the description of the property in Exhibit.P5 document is wrong and by giving wrong description of the eastern and northern boundaries, the property actually became property comprised in Sy. No.686/9, which is forest land and not the property covered by Exhibit D1 Sale deed executed in favour of the 1st respondent, though in Ext.P5 also, the Survey Number is given as Sy. No.686/1 as in Ext.D1.

6. The recital in Exhibit P5 Sale deed executed in favour of the appellant shows that the respondent had delivered over to the appellant the original of Ext.D1 sale deed in his favour as also his prior title deeds along with execution and delivery of Exhibit.P5. There is also indemnity clause in Exhibit.P5, whereby, the 1st respondent has undertaken the responsibility of indemnifying the appellant for all losses suffered by him, in case any loss is sustained to him by reason of Exhibit.P5 document. Obviously, a person who wants to cheat another will not undertake the responsibility of indemnifying the purchaser, if any loss is sustained to him, for reason of any defect in the title over the property transferred. The appellant while tendering evidence as PW1 has deposed that the respondent had showed him the original document in his favour as also all the prior title deeds and possession and encumbrance certificates as well. He has admitted in cross-examination that what he purchased is the property comprised in Sy. No.686/1; but that his case is that the property as per the description in the document is actually the property comprised in Sy. No.686/9, which is forest land. If at all there is any mistake in the description of boundaries, it is for the

appellant to get it corrected in appropriate proceedings. In the case of execution of sale deeds, it is the purchaser, who causes document to be drafted through the document writer furnishing all details of the property to him with reference to the prior title documents including the document in favour of the vendor. If at all any wrong description of the property has crept in by reason of boundaries having been shown as different from that in the document executed in favour of the respondent and the prior title deeds, the appellant cannot complain that the respondent who is the executant thereof has cheated him. This is more so, when the appellant has no case that the respondent is retaining possession with him of the property comprised in Sy. No.686/1 covered by Exhibit. D1 document. The case of the appellant that the tax was not received at the village office in relation to the property purchased by him under Exhibit.P5 on the ground that it is forest land also is unbelievable as the property covered by Exhibit.P5 is the property comprised in Sy. No.686/1 for which the respondent had title under Exhibit.D1 and the appellant has no case that any portion of the property in Sy. No.686/1 is forest land.

In the circumstances, the court below was right in holding that the 1st respondent has not committed any offence and has not cheated the appellant as alleged and has rightly acquitted the 1st respondent of the offence under Section 420 I.P.C with which he stood charged. There is no merit in this appeal and the appeal is dismissed.

K.P. BALACHANDRAN,
JUDGE.

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K.P. BALACHANDRAN, J.

CRL.A. NO. 324 OF 2003-C

JUDGMENT

Ist February, 2007